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In the

Supreme Court of the United States

October Term, 1968

No. 729

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL UNION 3-3, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF OF RESPONDENT WESTERN WIREBOUND BOX CO. IN OPPOSITION TO PETITION FOR CERTIORARI

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The petition fails to demonstrate the existence of a substantial legal question which this Court should consider, and the facts of the case show the chaotic consequences which would follow the drastic change in the law which petitioner seeks. It follows that the petition should be denied.

1. Petitioner suggests only a dispute between the successful charging party and the Board over the seniority rights of returning strikers under the decree (Pet 6-7). In fact, the parties and the Board have at all times since the Board's order was entered on February 6, 1964 been embroiled in disputes over a wide range of questions arising under the order and the subsequent decree, including the questions whether the June 1, 1961 collective bargaining agreement, which terminated on June 1, 1962,* retains sufficient life to control the seniority issue (the question mentioned by petitioner, Pet 6-7; see Lubersky Affidavit 30); the company's duty to furnish economic data for collective bargaining purposes (Lubersky Affidavit 12, 13, 14, 15, 20-28 — the issue before the Court of Appeals); proper layoffs when

*Affidavit of William F. Lubersky, 2-4, hereafter referred to as "Lubersky Affidavit." See also the attached exhibits referred to therein.

the company closed its green end (as to which the Union filed an unfair labor practice charge which was dismissed, Lubersky Affidavit 18-19); the posting of notices of the Board's order and the decree (Lubersky Affidavit 12, 14, 19); the proper computation of vacation pay for returned strikers (Lubersky Affidavit 12-13); and the Union's charge that the company had "condoned" improper picket line conduct of five employees who were not reinstated (Lubersky Affidavit 14-15, 17). In short, the Union treated the order and decree as a hunting license, and the Board has properly refused to join in the exercise — hence this petition to intervene, which would bring all of these questions (as to which petitioner has not prevailed) before the Court of Appeals on petitioner's charges that the Board has construed and applied the decree in accordance with the national labor policy instead of enforcing it as the agent and for the benefit of the charging party.

2. The situation is not at all like *International Union, Local 283 v. Scofield*, (1965) 382 US 205, which sustained the right of a successful charging party to intervene in enforcement proceedings on the ground that it had a sufficient private interest to participate as a party in the determination of the merits. In *Scofield*, the Court did not question the continued force of *Amalgamated Util. Wkrs. v. Consol. Edison Co.*, (1940) 309

US 261; instead, it carefully excluded enforcement cases (in which, as here, "the Board's expertness in achieving compliance with orders is challenged", 382 US at 221) from the scope of its decision.

3. None of petitioner's authorities sustain its contention that enforcement decrees have the characteristics of a private judgment. In *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, (1967) 386 US 129 the Court sustained intervention to oppose the terms of a *proposed* antitrust consent decree under the Federal Rules of Civil Procedure. The Court's decision that competing private interests should be heard at that stage of the proceeding makes the case somewhat like *Scofield*, but not at all like this one. *Missouri-Kansas Pipe Line Co. v. United States*, (1941) 312 US 502 is even less helpful. In that case, the decree expressly provided that Panhandle, the would-be intervener, should become a party upon proper application to enforce provisions of the decree which related to it. As the Court pointed out, the decree itself gave Panhandle "formal status" in the case (312 US at 506).

4. Petitioner urges that it does not seek to institute contempt proceedings, but only proceedings against the Board compelling it to enforce the Court's decree—presumably by contempt proceedings (Pet 15). The result, of course, is the same. The "intricate statutory scheme"

in which public and private interests "interblend" (*Scofield*, 382 US at 220) would be overturned, and control over the enforcement of decrees, a matter basic to national labor policy, would be removed from the agency to other hands. The Board would be little more than an execution officer for private interests which were incidental beneficiaries of its success before the court.

This is clearly wrong. This Court has emphasized, since *Scofield*, that the Act is designed to enforce public, rather than private rights, *Vaca v. Sipes*, (1967) 386 US 171 at 182, and the construction of the decree as well as questions of compliance must be left to the Board in administering the national labor policy, *N.L.R.B. v. Kohler Company*, (CA DC 1965) 351 F2d 798 at 806, 809.

5. Petitioner's reliance on the magnitude of its private interest in enforcement of the decree is contradicted by its failure to take advantage of *Scofield* and enter the litigation at an earlier time. In this and in all other cases presenting this question, the charging party will have allowed the Board to sustain the heat of battle alone and is in a poor position to insist that it now be heard in opposition to the Board's determination—in light of the public interest—of the proper construction and application of a decree which it chose not to pursue before the Court of Appeals.

The petition for certiorari sho ld be denied.

Respectfully submitted,

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